IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America	)	
	)	Cr. No. 6:00-107-HMH
	)	
vs.	)	**OPINION & ORDER**
	)	
Marcus Mandel Ellis,	)	
	)	
Movant.	)	

This matter is before the court on Marcus Mandel Ellis' ("Ellis") pro se motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. (§ 2255 Mot., ECF No. 222.) After a thorough review, the court finds that it lacks jurisdiction to consider Ellis' motion. "[A] prisoner seeking to file a successive application in the district court must first obtain authorization from the appropriate court of appeals." United States v. Winestock, 340 F.3d 200, 205 (4th Cir. 2003) (citing 28 U.S.C. § 2244(b)(3)), abrogated in part on other grounds by United States v. McRae, 793 F.3d 392, 397-400 (4th Cir. 2015). "The court of appeals must examine the application to determine whether it contains any claim that satisfies . . . § 2255." Id. "Section 2255(h) specifies the two limited conditions in which Congress has permitted federal prisoners to bring second or successive collateral attacks on their sentences." Jones v. Hendrix, No. 21-857, 2023 WL 4110233, at *9 (U.S. June 22, 2023). The applicant must come forward with "newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense." 28 U.S.C. § 2255(h)(1). Alternatively, the applicant may cite "a new rule of constitutional

law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." Id. § 2255(h)(2); see also In re Vassell, 751 F.3d 267, 269 (4th Cir. 2014) ("Under this procedure, '[t]he court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of [§ 2244(b)]' – namely . . . that the application presents a claim that 'relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.'"). In the absence of pre-filing authorization from the court of appeals, the district court is without jurisdiction to consider a second or successive application. Winestock, 340 F.3d at 205.

Because Ellis has previously filed a § 2255 motion that was adjudicated on the merits, the instant motion is successive. See (September 23, 2003 Opinion and Order, 6:03-2954, ECF No. 2.) Therefore, because Ellis has not obtained authorization from the appropriate United States Court of Appeals to proceed with a second or successive § 2255 motion, the court lacks jurisdiction over the instant § 2255 motion. Based on the foregoing, Ellis' § 2255 motion is dismissed.[1]

[1] Because this is a successive motion pursuant to § 2255, this case is not controlled by Castro v. United States, 540 U.S. 375, 383-84 (2003).

It is therefore

ORDERED that Ellis' § 2255 motion, docket number 222, is dismissed. It is further

ORDERED that a certificate of appealability is denied because Ellis has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
June 28, 2023

NOTICE OF RIGHT TO APPEAL

The Movant is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.